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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/966,019	09/28/2001	Christoph Geis	26,869-01	4578

23452 7590 06/24/2005

PATENT DEPARTMENT
LARKIN, HOFFMAN, DALY & LINDGREN, LTD.
1500 WELLS FARGO PLAZA
7900 XERXES AVENUE SOUTH
BLOOMINGTON, MN 55431

EXAMINER

REVAK, CHRISTOPHER A

ART UNIT	PAPER NUMBER
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2131

DATE MAILED: 06/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/966,019

Applicant(s)

GEIS ET AL.

Examiner

Christopher A. Revak

Art Unit

2131

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 September 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,8,9 and 15-20 is/are rejected.
- 7) ☒ Claim(s) 2-7,9-14,18 and 20 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 September 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date see attached.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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DETAILED ACTION

Specification

1. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally ***limited to a single paragraph*** on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

The applicant is advised to amend the abstract so that exists as a single paragraph.

Claim Rejections - 35 USC § 101

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 15-20 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The current language recites of a data carrier containing a computer program which is not tangible embodied and is just software alone and of itself. The examiner suggests language reciting that the data carrier containing a computer program is executed by a processor.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1,2,8,9,15-17, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shwed et al, U.S. Patent 5,835,726 in view of Lyle, U.S. Patent 6,886,102.

As per claims 1,8,15, and 17, it is disclosed by Shwed et al of a method, system, and data carrier containing a computer program for recognizing and refusing denial of service and distributed denial of service attacks on server systems of network providers and operators by means of an intermediary device implemented in a computer network. The electronic intermediary device contains a computer program for carrying out defense for a target computer system against the denial of service and distributed denial of service attacks. Network connection requests are registered and data packet associated with the connection request is stored in memory. The validity of the registered network connection is checked along with the data packet associated with the network connection request. The data packet associated with the network connection request is forwarded to the target system that was the subject of the network connection request (col. 2, lines 32-50 and col. 3, lines 8-30). The teachings of Shwed et al are silent in disclosing of sending a periodic acknowledgement signal to preserve

the network connection between the target system and the network connection request. It is disclosed by Lyle of sending a periodic acknowledgement signal to preserve the network connection between the target system and the network connection request (col. 3, lines 59-61 and col. 32, lines 1-11). It would have been obvious to a person of ordinary skill in the art at the time of the invention to have been motivated to apply the sending of periodic acknowledgements in order to maintain the connections. Lyle recites of motivation for the periodic transmission of acknowledgement signals by reciting packets not authenticated can be ignored and only the authenticated packets are processed (col. 32, lines 56-63). It is obvious that the teachings of Shwed et al would have found this aspect of Lyle beneficial as a further means of protecting against attacks by processing only authenticated packets.

As per claims 2 and 9, Shwed et al discloses of checking for available network service in the target system that can receive the data packet (col. 6, lines 30-38).

As per claim 16, it is disclosed by Shwed et al of a non-network addressed electronic intermediary device passively coupled to a computer network, the electronic intermediary device monitors each data packet received by the computer network which data packet contains a network connection request (col. 2, lines 37-40; col. 3, lines 8-11; and col. 5, lines 60-67).

As per claim 19, it is disclosed by Shwed et al that the computer program is stored in a programmable read-only memory storage location (col. 9, line 67 through col. 10, line 1).

Allowable Subject Matter

6. Claims 3-7, 10-14, 18, and 20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

As per claims 3 and 10, it was not found to be taught in the prior art of using a neutralizing protocol identifier so that an actual TCP/IP fingerprint of the target system is not sent to the requesting system.

As per claim 18, it was not found to be taught in the prior art of replacing an actual network fingerprint data of the target system with a default network fingerprint protection data and excluding a specific external network source address from the communication with a target system.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Ando et al, U.S. Patent 6,895,432 discloses of registering connection requests for protection against intrusions.

Hartmann et al, U.S. Patent 6,851,062 discloses of registering clients to a denial of service list when they fail to negotiate a connection.

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8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher A. Revak whose telephone number is 571-272-3794. The examiner can normally be reached on Monday-Friday, 6:30am-4:00pm.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ayaz Sheikh can be reached on 571-272-3795. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CR

June 20, 2005

Christopher Revak
AU 2131


6/20/05